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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re N.Y., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

T.L.,

Defendant and Appellant.

A141093

(Alameda County
Super. Ct. Nos. OJ07007825

T.L. (Mother) appeals from the disposition order denying her request for unsupervised visitation between her and her minor child, N.Y., and granting the Alameda County Social Services Agency (Agency) the discretion to move to unsupervised visitation. Because her notice of appeal was not timely filed we hereby dismiss this appeal.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

We need not provide great detail about this matter.

On July 7, 2010, a Welfare and Institutions Code¹ section 300 petition was filed by the San Joaquin County Human Services Agency on behalf of the minor and her two

¹ All further statutory references are to the Welfare and Institutions Code except as otherwise indicated.

siblings, Z.M. and S.Y. As sustained, the petition stated subdivision (b) and (g) allegations, primarily based on a July 3, 2010 incident in which all three minors were detained by the police following Mother's arrest for prior warrants. Prior to the arrest, the police had been called after she began to break things and vandalize a family shelter located in Stockton. The petition also noted Mother's long history of mental health problems.

On December 3, 2010, the petition was found to be true and dependency was declared. Mother was offered family reunification services and the matter was transferred to Alameda County.

On January 31, 2012, family reunification services were continued. Mother engaged substantially in her case plan over the following six months and, as a result, all three minors were returned to her care with family maintenance services on July 9, 2012.

On April 11, 2013, the Agency filed a section 387 supplemental petition on behalf of the three minors. As amended and sustained, the petition stated supplemental allegations based on Mother's noncompliance with her case plan, including no-show drug tests, failure to keep the Agency apprised of her current address and telephone number, uncooperative behavior towards the assigned social worker, and failure to properly supervise the children.

In a dispositional report prepared for the jurisdictional/dispositional hearing, the Agency recommended, in part, that Mother's visitation with the children be supervised because she shared with the children what appeared to be her delusions, such as that the social worker wished them physical harm and that she killed animals at night.

On December 19, 2013, the contested disposition hearing was concluded. The dependencies for all three children were continued with out-of-home placement. The juvenile court denied Mother's request for unsupervised visitation and granted the Agency discretion to move to unsupervised visits, noting the Agency's concerns regarding her unsatisfactory participation in her case plan objectives.

Mother filed her notice of appeal on February 19, 2014.

DISCUSSION

The Agency correctly argues that this appeal must be dismissed. Under California Rules of Court, rule 8.406(a)(1), with two exceptions not applicable here, a notice of appeal in a dependency proceeding must be filed within 60 days after “the making of the order being appealed.” In other words, upon the making of an appealable order or judgment in a dependency proceeding, a 60-day deadline to appeal begins to run. Further, if a party fails to appeal an appealable order or judgment within the prescribed time, a reviewing court does not have jurisdiction to review the order or judgment, and the time to appeal is not restarted or extended by a subsequent appealable order or judgment. (See *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1156.)

Here, the 60th day after the December 19, 2013 disposition orders was Monday, February 17, 2014. The 60-day deadline was extended to the following day, Tuesday, February 18, 2014, due to the Presidents’ Day holiday.² As noted above, Mother filed her notice of appeal on Wednesday, February 19, 2014. This one-day delay is fatal to this appeal.

“ ‘[T]aking of the appeal is not merely . . . procedural . . . ; it vests jurisdiction in the appellate court and terminates the jurisdiction of the lower court.’ ” (*In re Frederick E.H.* (1985) 169 Cal.App.3d 344, 347, italics omitted.) “The consequences of an untimely notice of appeal . . . are not remediable. ‘In the absence of statutory authorization, neither the trial nor appellate courts may extend or shorten the time for appeal [citation], even to relieve against mistake, inadvertence, accident, or misfortune [citations]. . . . If it appears that the appeal was not taken within the 60-day period, the court has no discretion but must dismiss the appeal of its own motion even if no objection

² Code of Civil Procedure section 12a, subdivision (a), provides: “If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday. For purposes of this section, ‘holiday’ means all day on Saturdays, all holidays specified in [Code of Civil Procedure] Section 135 and, to the extent provided in [Code of Civil Procedure] Section 12b, all days that by terms of Section 12b are required to be considered as holidays.”

is made. [Citations.]’ ” (*Ibid.*; see also *People v. Mendez* (1999) 19 Cal.4th 1084, 1094 [“An untimely notice of appeal is ‘wholly ineffectual: The delay cannot be waived, it cannot be cured by nunc pro tunc order, and the appellate court has no power to give relief, but must dismiss the appeal on motion or on its own motion.’ [Citations.].”]³

The record does not show Mother to have filed notices of appeal in the related proceedings pertaining to Z.M. or S.Y. She filed only one notice of appeal, and that was in N.Y.’s matter. The cover page of the notice filed in N.Y.’s matter shows only N.Y.’s name and bears only N.Y.’s case number, though on the second page Mother claims the notice pertains to all three minors. Regardless of whether the notice of appeal applies to all three minors, the fact remains that it was not timely filed. The time to appeal an order begins to run from the time the order is pronounced in open court. (*In re Alyssa H.* (1994) 22 Cal.App.4th 1249, 1254; *In re Markaus V.* (1989) 211 Cal.App.3d 1331, 1337.) Mother’s counsel was present at the December 19, 2013 hearing when the court pronounced the order in open court. While it appears he prepared and signed the notice of appeal on February 17, 2014, the document bears a file stamp date of February 19, 2014, one day after Mother’s time to appeal expired.⁴

As the notice of appeal filed in N.Y.’s matter was not timely filed, this appeal must be dismissed for lack of appellate jurisdiction.

DISPOSITION

The appeal is dismissed.

³ It is true that a parent’s interest in the care, custody and control of his or her child is a fundamental liberty interest such that the right to counsel in dependency proceedings where termination of parental rights may result is protected by due process, as well as by statute. (§ 317; *In re O.S.* (2002) 102 Cal.App.4th 1402, 1407.) The due process right to counsel in dependency proceedings, however, has not been extended to rectify the late filing of a notice of appeal. (*In re A.M.* (1989) 216 Cal.App.3d 319, 322; *In re Ricky H.* (1992) 10 Cal.App.4th 552, 559-560; *In re Issac J.* (1992) 4 Cal.App.4th 525, 534.)

⁴ The record does not show Mother had any extension of time granted under California Rules of Court, rule 8.66, which pertains to extending time because of a public emergency.

Dondero, J.

We concur:

Margulies, Acting P.J.

Banke, J.